

**\*E-Filed 8/6/09\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

No. 5:06 CR 0095 JF (RS)

Plaintiff,

**ORDER UPON *IN CAMERA*  
INSPECTION OF DOCUMENTS  
IN RESPONSE TO SUBPOENA**

v.

FRANCISCO JAVIER ALCAZAR,

Defendant.

On July 16, 2009, the Court conducted a hearing on the motion to quash filed by the Alameda County District Attorney's office in response a subpoena *duces tecum* served by defendant Francisco Javier Alcazar. At the conclusion of that hearing, counsel for the Alameda County District Attorney produced certain responsive documents to defense counsel, but maintained, in conjunction with the United States, an objection to producing certain other documents called for by the subpoena. The Court agreed to review those disputed documents *in camera*.

The documents at issue are generally comprised of investigative reports, trial preparation notes, chemical analysis reports, and summonses provided to the County probation office regarding a criminal case in Alameda County Superior Court in 2004-2005. While the earlier state court case is unrelated to the federal criminal charges against defendant Alcazar, certain confidential informants involved in this case also participated in that action.

The Alameda County District Attorney objects to producing these materials on the grounds

1 that they reflect confidential work product from an unrelated case that is both irrelevant and  
2 privileged from disclosure in this action. The United States has further objected on the grounds that  
3 disclosure of the material would compromise the safety of the confidential informants, even though  
4 their identity has previously been disclosed to the defense.

5 Contrary to the arguments advanced by the prosecution, the documents at issue do not appear  
6 to provide any identifying information pertaining to the confidential informants that would facilitate  
7 any efforts to locate them or augment any risk to their safety. That said, upon review of the withheld  
8 documents, it does appear that they lack relevance to the pending criminal action, provide no  
9 additional information regarding any benefits received by the confidential informants, and include  
10 protected attorney work product. Accordingly, neither the Alameda County District Attorney's  
11 office nor counsel for the United States will be required to disclose them to the defendants.

12 As occurred in connection with this Court's prior *in camera* review of documents sought by  
13 the defense from the prosecution, *see* Order dated March 18, 2009, the United States in connection  
14 with this motion to quash has filed under seal a declaration of DEA Special Agent Hilda Morejon in  
15 support of non-disclosure. That declaration, as with its predecessor, does not appear to reveal any  
16 confidential information. Consequently, the United States will be required to re-file that declaration  
17 in an unsealed format within five days of the date of this order, or to submit a further declaration  
18 justifying why that document should remain under seal.

19  
20 **IT IS SO ORDERED.**

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23 Dated: 8/6/09

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24 RICHARD SEEBORG  
United States Magistrate Judge